

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12579
Docket No. 11981
93-2-90-2-84

The Second Division consisted of the regular members and in addition Referee Robert O. Harris when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(
(Illinois Central Railroad

STATEMENT OF CLAIM:

"That the Illinois Central Railroad violated the current and controlling Agreement between the International Association of Machinists and the Illinois Central Railroad dated April 1, 1935, as subsequently revised and amended, when it harshly and unjustly dismissed Machinist James S. Grady on February 27, 1990, account he allegedly absented himself without proper authority from January 30, through and including February 10, 1990, in violation of Mechanical/Material Department Employees General Regulations #9, dated January 1, 1990.

That the Illinois Central Railroad reinstate Machinist J. S. Grady to service, make him whole for any and all losses incurred as result of the investigation conducted on February 21, 1990, and clear his service record of all reference to the incident."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant asked for a 30-day leave of absence on January 24, 1990. By registered letter, dated January 31, 1990, the Carrier denied this request because "You are needed at work on the job as a Machinist." Claimant did not work between January 30 and February 10, 1990, calling in sick on each day except February 8. Subsequently, he submitted a note from his doctor, dated February 12, 1990, which states:

"Mr. Grady has been seen and treated by me for a severe respiratory infection making it necessary for him to miss work from Jan. 27th to date. He now has my permission to resume his regular duties on Feb. 13th."

On February 7, 1990, the General Foreman went to Claimant's house and asked to see him. Claimant was not home. The General Foreman returned to Claimant's house the next day and spoke to Claimant.

At the Hearing, Claimant admitted in answer to a question that he had other employment with another transportation company and was working during the period in question.

It is the Organization's contention that Claimant did not need permission to have time off if he was sick and that his doctor's note proves that he was sick. The Carrier contends that Claimant was absent without permission and, consequently, its action in terminating his employment was proper.

It is clear that the Carrier Rule does not require permission for an individual to be off because of sickness. However, there is an assumption in the Rule that the individual is actually too sick to work. In this case, Claimant may have been sick; however, his action in working at another job during the period in question clearly shows that his sickness was not sufficient for him to miss work. Accordingly, his use of his alleged sickness after having been refused a leave of absence was a subterfuge and the Carrier was entitled to consider him absent without permission. See for example Third Division Award 19808.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 15th day of September 1993.